done. It is to be noticed that in the principal case stress is laid on the Illinois statute, making a married woman equally liable with her husband for necessaries furnished to the family, provided she has a separate estate. This undoubtedly made it easier for the court to render the decision they did, but it is only one of the many statutes the spirit of which must be regarded.

There may readily be a difference of opinion as to whether the spirit of the laws so far enacted does justify the decision in the principal case. It may well be said that up to the present time statutes have merely sought to protect the wife from the power of her lord and master. However, so much has been justly said against the fairness of modern legislation, as removing woman's disabilities without imposing upon her the corresponding burdens, that it is rather refreshing to see this very legislation instrumental in imposing the "burdens" with a vengeance.

"GOLD CLAUSE" CONTRACTS. — The demand in the platform of one of our political parties that Congress enact legislation to prevent the demonetization of any kind of legal tender money by private contract, has occasioned some discussion as to the legal efficacy of "gold clause" contracts. Are contracts for money payable specifically in gold coin of the United States enforceable? Can Congress by retrospective legislation make nugatory such contracts already in existence?

As the law now stands, the answer to the first question is in no doubt. In *Bronson* v. *Rhodes*, 7 Wall. 229 (1868), the United States Supreme Court declared that a bond payable in gold and silver coin of the United States could not be satisfied by a tender of United States legal tender currency of the same nominal amount as the face of the bond. The *Legal Tender Cases*, 12 Wall. 457 (1870), established the validity of such a tender to discharge an antecedent debt payable in money generally, on the ground that such a contract contemplated payment in what was lawful money at the time of payment and not at the time of contracting. The court carefully guarded itself against overruling *Bronson* v. *Rhodes* (see 12 Wall. at p. 548), and a year later reaffirmed this latter decision in *Trebilcock* v. *Wilson*, 12 Wall. 687 (1871), where it explicitly declared the Legal Tender Act not applicable to contracts payable in other specific forms of money. A recent United States decision, *Woodruff* v. *Mississippi*, 162 U. S. 291, 16 Sup. Ct. Rep. 820, has been occasionally cited to the contrary during the past summer by careless writers. The court here, however, decided that the true construction of the contract made it payable, not in gold coin, but in money generally, so the point in question did not arise. 162 U. S. at p. 302, 16 Sup. Ct. Rep. at p. 824. At present, therefore, there can be no difficulty in enforcing "gold clause" obligations.

Nor is it probable that any act of Congress designed to destroy the effect of gold contracts already made would be held constitutional. The Fifth Amendment to the Constitution prohibits the United States from depriving any person of life, liberty, or property without due process of law. Retrospective legislation that impairs vested rights is a deprivation of property without due process of law within this prohibition. Cooley, Const. Lim., 6th ed., 431, 443; *Westervelt* v. *Gregg*, 12 N. Y. 202; *Streubel* v. *Ry.*, 12 Wis. 67; *Taylor* v. *Porter*, 4 Hill, 140, 145. What is meant by due process of law? "Undoubtedly a pre-existent rule of conduct, declarative of a penalty for a prohibited act; not an *ex post facto* rescript

or decree made for the occasion. The design of the convention was to exclude arbitrary power from every branch of the government; and there would be no exclusion of it, if such rescripts or decrees were allowed to take effect in the form of a statute." Gibson, C. J., in *Norman* v. *Heist*, 5 Watts & Serg. at p. 173. The holders of obligations payable in money of a specified kind may rely with tolerable certainty upon the protection of the United States Constitution, whatever may be the will of Congress.

CITATION OF AMERICAN CASES IN ENGLAND. — The part which American decisions ordinarily play in the English courts is so insignificant that it is surprising to find one of them actually mentioned in the head-note of an English case. The reporter's syllabus of *Kennedy* v. *Trafford*, [1896] 1 Ch. 763, contains these words: "*Van Horne* v. *Fonda*, 5 Johns. Ch. [N. Y.] 388, not followed." And the opinions of the judges show that the case figured prominently in the discussion. The incident called forth a spirited editorial in the Solicitors' Journal of June 13th, in which the writer protested strongly against allowing "English principle to be stifled by foreign competition," and quoted Lord Halsbury's remarks in *Re Missouri Steamship Co.*, 42 Ch. D. 321, 330: "We should treat with great respect the opinion of eminent American lawyers on points which arise before us, but the practice, which seems to be increasing, of quoting American decisions as authorities, in the same way as if they were decisions in our own courts, is wrong." Of course indiscriminate indulgence in the practice deplored by the learned Chancellor might well be frowned on by the English Bench. But Lord Halsbury certainly did not have in mind such an instance as this. *Van Horne* v. *Fonda* is the starting point of a peculiar and well established American doctrine. An English court, called upon for the first time to decide a point involving that doctrine, would hardly be performing its duty adequately if it ignored the leading American case.

A NEW PHASE OF THE RIGHT TO PRIVACY. — When a right is as vague and undefined as the right to privacy, to consider novel actions brought, as showing tendencies and possibilities in its development, has as much a place in current discussion as to comment on the actual decisions of the highest courts. The bringing of such a suit based on the right to privacy is noticed in 30 American Law Review, 582. A mother took her infant to a hospital, where it was operated upon in her presence before medical students. The suit is brought for the child by its next friend against the surgeon, who performed the operation. Two grounds are stated as infringements of its right to privacy, first, the publicity of the operation, and, secondly, the publication of a pamphlet containing a scientific account of the operation and illustrated by photographs taken for the purpose. Fictitious initials were used to conceal the child's identity.

Without going into the question of consent in this case, the important point is whether on such facts the right to privacy has been infringed at all. The difficulty to be met by the trial judge is at once apparent, when it is considered that no definition of this right has been given that can aid him, nor does any seem possible as yet. Its extent must be determined as cases come up by a process of elimination rather than definition. See Messrs. Warren and Brandeis' article, 4 HARVARD LAW REVIEW, 194.